

REMARKS

During the personal interview of October 19, 2004, the Applicants' representatives Wendy Lee and Alex Andrus discussed the merits of the application and possible claim amendments which may result in allowance. The Examiner indicated that such amendments may be entered via this Amendment under 37 C.F.R. §1.116.

In the claim amendments listed in the previous section of this Amendment, new Claim 55 replaces Claim 1. Applicants believe that new Claim 55 is free of the prior art cited by the Examiner in her final Office Action of September 16, 2004, and is consonant with the Examiner's indication of allowable subject matter during the October 19, 2004 interview. Support for "an anti-ErbB2 antibody which binds to the 4D5 epitope" in new independent Claim 55 may be found at paragraph [0085] (page 24, lines 20-25 of the application as originally filed).

The amendments to Claims 2, 4-6, 8, 20, 24, 27, 29, 32, 34, 37, 42, and 46-48 amend the dependency of these claims to accord with the cancellation of Claim 1 and the introduction of new independent Claim 55.

No new matter is added by way of the new claim or by way of the claim amendments.

Claims 2, 4-6, and 8-21, 24-48 and 55 are pending in the application. Claims 1, 2, 4, 5, 8-12, 14-17, 20, 24-33, and 38-41 stand rejected under 35 U.S.C. §103(a) as allegedly obvious over Chari et al. (U.S. Patent No. 6,436,931; hereafter "Chari") in view of Hudziak et al. (U.S. Patent No. 5,725,856, hereafter "Hudziak") and further in view of Lewis et al. (Cancer Immunol. Immunotherap. 37:255-263, 1993; hereafter "Lewis"). Claims 1, 2, 4, 5, 8-20, 24-33, 38-41 and 46-48 stand rejected under 35 U.S.C. §103(a) as allegedly obvious over Chari (U.S. Patent No. 6,436,931) in view of Carter et al. (U.S. Patent No. 6,054,297; hereafter "Carter") and further in view of Lewis. Claims 1, 2, 4-6, 8-12, 14, 20, 24-33, and 38-41 stand rejected under 35 U.S.C. §103(a) as allegedly obvious over Chari in view of Bacus et al. (U.S. Patent No. 5,514,554, hereafter "Bacus") and further in view of Lewis. Claims 1, 2, 8-14, 20, and 24-33 stand rejected under 35 U.S.C. §103(a) as allegedly obvious over Chari in view of Huston et

al. (U.S. Patent No. 5,877,305, hereafter "Huston") and further in view of Lewis. Claims 1, 2, 8-12, 24-33, and 38-41 stand rejected under 35 U.S.C. §103(a) as allegedly obvious over Chari in view of King et al. (U.S. Patent No. 5,747,261, hereafter "King") and further in view of Lewis. Claims 1, 34, 44 and 45 stand rejected under 35 U.S.C. §103(a) as allegedly obvious over Chari in combination with Hudziak, Bacus, Huston, or King in view of Lewis as applied to Claim 1 and further in view of Senger et al. (U.S. Patent No. 6,022,541, hereafter "Senger"). Claims 1, 34-37, 42 and 43 stand rejected under 35 U.S.C. §103(a) as allegedly obvious over Chari in combination with Hudziak, Bacus, Huston, or King in view of Lewis as applied to Claim 1 and further in view of Sliwowski et al. (J. Biol. Chem. 269:14661-14665, 1994; hereafter "Sliwowski") or Carter. Claims 1, 4-6, 8-19, 22-25, 27 and 32 stand rejected under 35 U.S.C. §103(a) as allegedly obvious over Iwassa (U.S. Patent No. 5,217,713, hereafter "Iwassa") in combination with Carter, Hudziak, Bacus, Huston, or King in view of Lewis.

As discussed in the following remarks, applicants respectfully traverse the above rejections, and submit that these rejections are rendered moot in view of the claim amendments.

The Rejections to the Pending Claims Under 35 U.S.C. §103(a)

The cited references were discussed at length in previous amendments. For the sake of brevity, applicant's arguments in prior amendments with respect to the claimed invention with regard to the cited references will not be repeated, these prior-filed arguments being hereby incorporated by reference.

As amended, Claim 55 and its dependent claims all recite a treatment method requiring administration to an animal that has a "tumor characterized by the overexpression of an ErbB2 receptor" and that has "been determined to not respond, or to respond poorly, to treatment with an anti-ErbB2 antibody which binds to the 4D5 epitope." Moreover, the treatment requires that such a tumor be treated with a conjugate, the conjugate being "an anti-ErbB2 antibody which binds to the 4D5 epitope" conjugated together "with a maytansinoid."

None of the cited references discuss, and no combination of the cited references discusses or suggests, treating a tumor characterized by the overexpression of an ErbB2 receptor where the tumor has been determined to not respond, or to respond poorly, to treatment with an anti-ErbB2 antibody which binds to the 4D5 epitope. In particular, none of the cited references, nor any combination of the cited references, discuss or suggest that such a tumor be treated with a conjugate comprising a) an anti-ErbB2 antibody which binds to the 4D5 epitope and b) a maytansinoid. Lacking any such discussion or suggestion, the cited references, however combined, provide no reasonable expectation of success for the claimed methods. Accordingly, applicants respectfully submit that Claims 2, 4-6, 8-21, 24-48, and 55 are not made obvious by the cited references and that the claim rejections under 35 U.S.C. §103(a) are overcome.

CONCLUSION

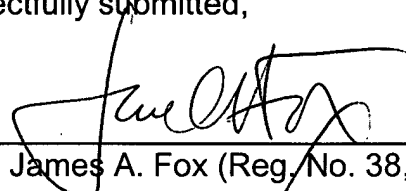
Applicants request entry of the claim amendments, which are believed to place the claims in form for allowance or in better form for appeal. Applicants respectfully submit that all claims stand in allowable form, and respectfully request their reconsideration and allowance. Early notification of the allowance of all claims is respectfully requested.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. **08-1641**, referencing Attorney's Docket No. **39766-0073 A2**.

Respectfully submitted,

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By: _____


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